

LIST OF COMMENTORS SUBMITTED AFTER
NOVEMBER 10, 2005

California Legislature	2
California Association of Sanitation Agencies	4
California CUPA Forum (11/2005)	6
California CUPA Forum (12/2005)	8
Sacramento County Sheriff Department	10
Clean Water Action	11

California Legislature

December 9, 2005

Mr. Edward Nieto
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812

Dear Mr. Nieto:

As the Department of Toxic Substances Control (DTSC) finalizes the Best Management Practices (BMPs) of perchlorate and perchlorate-containing materials, we write to express our opposition to exemptions requested by the military, explosive users, fertilizer industry, growers, pesticide manufacturers and others.

It is my understanding that DTSC has worked closely with all interested parties on the BMP and we commend you for this work. The draft BMP as currently written and that must be approved by December 31, 2005, reflects the mandates of Chapter 608, Statutes of 2003 (AB 826, Jackson, 2003) and will do much to protect Californians from the dangers of perchlorate.

The Perchlorate Contamination Prevention Act (AB 826) clearly stated legislative intent to prevent "contamination from management of perchlorate material and from generation, storage, treatment, and disposal of perchlorate or perchlorate-containing waste relative to emissions into the air and subsequent deposition and runoff into surface water or groundwater, and direct or indirect discharge to surface soils, subsurface soils, surface water, or groundwater of the State of California." Thus, any exemptions from the BMP must be made only if there is irrefutable proof that an exemption will not contaminate our environment in any way.

In California, perchlorate contamination has been found in eastern Sacramento County, Simi Valley, the San Gabriel Valley, the Santa Clara Valley Water District and in the Colorado River water supplying Southern California. The Perchlorate Contamination Prevention Act is a good law, and your efforts to date are consistent with the desire to protect the public from the known dangers of perchlorates. As DTSC prepares its final version of the Best Management Practices, we urge you to deny industry requests for exemptions.

While we recognize, as does DTSC, that road flares release perchlorates into our environment, we ask the Department continue to work with interested stakeholders – especially law enforcement – to explore and encourage non-toxic alternatives to the use of flares that contain perchlorates.



Mr. Edward Nieto
December 9, 2005
Page 2

Thank you for your consideration in this matter.

Sincerely,

ORIGINAL SIGNED

Senator Wesley Chesbro
Chair, Senate Committee on the Budget Fiscal Review

ORIGINAL SIGNED

Assemblymember Loni Hancock
Chair, Assembly Committee on Natural Resources

ORIGINAL SIGNED

Assemblymember Fran Pavley
Chair, Assembly Budget Subcommittee on Resources

ORIGINAL SIGNED

Assemblymember Ira Ruskin
Chair, Assembly Committee on Environmental Safety and Toxic Materials



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

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Mr. Ed Nieto
California Department of Toxic Substances Control
Post Office Box 806
Sacramento, CA 95812-0806

December 1, 2005

Re: Proposed Regulations Regarding Perchlorate Best Management Practices

Dear Mr. Nieto:

These comments are submitted on behalf of the California Association of Sanitation Agencies (CASA) regarding the draft regulations for perchlorate best management practices. CASA's members include over 110 cities and wastewater collection and treatment agencies who serve over 90% of California's sewered population. CASA recently became aware that the Department of Toxic Substances Control (DTSC) was developing these regulations, and, although the comment period has ended, we request our comments be included in the administrative record for the regulations. We sincerely appreciate that DTSC staff brought this rulemaking to our attention, and hope the issues raised herein will be able to be addressed before the regulations are finalized.

CASA's members own and operate wastewater treatment facilities, also known as publicly owned treatment works (POTWs), that may accept liquid perchlorate containing waste, and several CASA member agencies also own and/or operate solid waste facilities that may accept solid perchlorate containing waste. Therefore, CASA's members are likely to be affected by the proposed regulations.

CASA is primarily concerned with the provisions of draft section 67384.10, Discharge/Disposal Best Management Practices for Perchlorate Materials. In particular, subsection (c) provides, "The POTWs receiving wastewater from business that have identified perchlorate-containing discharges, shall monitor the POTW's effluent for perchlorate and shall include the perchlorate as a constituent on their National Pollutant Discharge Elimination System (NPDES) permit."

The requirement to "include the perchlorate as a constituent on their NPDES permit" is ambiguous. It is not clear how perchlorate is intended to be addressed in the NPDES permit or in what manner perchlorate is to be "included." Further, subsection (c) implies that POTWs have control over what is "include[d] as a constituent on their NPDES permit." The governing Regional Water Quality Control Board, however, determines what shall be included in a NPDES permit, after public notice and hearing. The POTW cannot ensure that any constituent will be included in a NPDES permit. In fact, the Regional Board determines the conditions of a NPDES permit based on whether the discharge will cause or have a reasonable potential to cause exceedances of water quality standards. (40 C.F.R. 122.44(d).) It would appear that the proposed regulation infringes on the Regional Board's jurisdiction to establish conditions in a NPDES permit in accordance with federal regulations. The proposed perchlorate regulations should not impair the Regional Boards' authority to implement the Federal Clean Water Act and applicable regulations, and should not require action that goes beyond that required by the Clean Water Act and regulations.

Subsection (c) further implies that all POTWs that accept perchlorate-containing discharges must monitor for perchlorate, without recognizing that monitoring may not be necessary in all cases. For example, some CASA members own and operate wastewater treatment plants that discharge to the ocean.

The perchlorate public health goal is intended to protect municipal or domestic supply designated uses. The ocean is not designated for use as a municipal or domestic supply (MUN) (*see* State Water Resources Control Board, California Ocean Plan, p. 3 (as amended April 2005)) and thus discharges to the ocean do not have the reasonable potential to cause or contribute to an exceedance of any applicable water quality standard pertaining to perchlorate. The Regional Water Quality Control Boards should therefore be given discretion to determine that monitoring may not be necessary under certain conditions, such as for discharges to the ocean.

To address these concerns, CASA proposes the following language to replace section 67384.10(c):

(c) The POTWs receiving wastewater from businesses that have identified perchlorate-containing waste in their discharges shall notify the appropriate Regional Water Quality Control Board of the acceptance of perchlorate-containing waste by the POTW in any Report of Waste Discharge. If deemed necessary by the appropriate Regional Water Quality Control Board after consideration of the reasonable potential to cause or contribute to an exceedance of applicable water quality standards, the National Pollutant Discharge Elimination System (NPDES) permit issued to the POTW shall include a requirement to monitor for perchlorate. Monitoring requirements imposed pursuant to this section may be modified or terminated if deemed appropriate by the Executive Officer of the appropriate Regional Water Quality Control Board.

Similarly, with respect to the perchlorate monitoring requirements for landfills specified in draft section 67384.10(a), Regional Water Quality Control Boards should be given discretion to determine whether perchlorate monitoring is necessary. We believe this is justified by the data provided to us by one member agency, the Los Angeles County Sanitation Districts (LACSD). Under the direction of the Regional Water Quality Control Board, in 2003 LACSD conducted extensive monitoring at its landfill facilities in the Los Angeles region, and did not detect perchlorate in any samples. All monitoring results were provided to the Los Angeles Regional Water Quality Control Board. On-going perchlorate monitoring is expensive and unnecessary when initial monitoring has determined that perchlorate is not detected. Therefore, section 67384.10(a)(2) should be revised to clarify that the Regional Water Quality Control Board has discretion to determine whether perchlorate monitoring is necessary.

CASA appreciates your attention to these comments. Please feel free to contact me if you have any questions or require additional information.

Sincerely,

ORIGINAL SIGNED

Marlaine Dumaine
California Association of Sanitation Agencies



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November 21, 2005

Mr. Ed Neito
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

RE: PERCHLORATE BEST MANAGEMENT PRACTICES FOR PERCHLORATE MATERIALS - DRAFT LANGUAGE

The California CUPA Forum Board requests that the Department of Toxic Substances Control (DTSC) consider the following comments when developing their draft regulations for Perchlorate Best Management Practices for Perchlorate Materials. Please understand that our comments are not directed at the rational for regulating perchlorate materials but rather to ensure Unified Program resources are directed to oversee the most important and significant environmental and public health impacts that may result from the improper management of perchlorate materials.

General Comments:

In general the California CUPA Forum Board finds these regulations to be necessary for public health and safety; however, we feel perhaps the scope of the regulations go beyond what is necessary to protect public health and safety. The CUPA Forum Board strongly suggests that DTSC developed a regulatory overview approach to these regulations similar to the Universal Waste Regulations. We suggest that Unified Program Agencies inspect large handlers of perchlorate materials and generators of perchlorate waste and establish a more flexible oversight program such as follows:

- a. Spot check inspections of businesses that may handle perchlorate below a certain threshold or when receiving a complaint
- b. Piggyback inspections, e.g., inspecting for perchlorate when conducting other regulatory activities
- c. Educational outreach to industry related organizations or business groups
- d. Follow-up to an emergency response
- e. Other activities as identified by the CUPA or PA

The CUPA Forum Board suggests that DTSC work with us to develop a practical regulatory oversight approach that will ensure public health and safety while maximizing our resources.

Specific Comments:

Regarding §67384.4 Labeling requirements for Perchlorate Materials

Subsection (a) requires that "persons who manufacture perchlorate materials for sale, receive perchlorate materials for resale or use in California, or generate a perchlorate



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containing waste shall ensure that the perchlorate materials are properly labeled... All perchlorate material, except those materials listed in subsection (b) of the section shall be labeled and marked clearly with the following, "Perchlorate Material - Environmental Hazard- Special handling and disposal restrictions may apply, See www.dtsc.ca.gov/perchlorate".

1. We question the need to further label hazardous waste beyond the current regulatory requirements with this additional information. What is the purpose for placing a website address on the label?
2. From a regulatory enforcement requirement, how are Unified Program Agencies (UPAs) expected to enforce these requirements? If the manufacturer or distributor fails to provide the appropriate labels does the UPA site the user of perchlorate or generator of perchlorate waste with a violation of this section?
3. Section (b)(3) exempts "... Perchlorate materials used or maintained at a site where all personnel handling the perchlorate material have received instruction on, have access to information in the workplace, and comply with perchlorate Best Management Practices requirements of this chapter;". It is unclear how this can be enforced.

Regarding §67384.5 Packaging best management practices requirement for perchlorate materials

1. How is an inspector to know if a package is "designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to handling, there will be no identifiable release of perchlorate materials to the environment"? Wording such as "limited", "normally"; and "identifiable" provide for certain inconsistent interpretations.
2. Enforcing what a "water-resistant package" will also be a challenge in ensuring a level of consistency.

Regarding §67384.6 Containment best management practice requirements for the storage, processing and manufacturing of perchlorate materials

1. How is an inspector to know if a water resistant structure is "... of adequate strength to support the loads"?

Regarding §67384.7 Notification best management practice requirements for perchlorate materials

1. Requiring businesses that handle less than 500 pounds or less than 55 gallons of liquids a year to notify DTSC is contrary to the intent of Assembly Bill (AB) 3041 chaptered on October 1, 2004. This bill revised AB 826 to ensure that perchlorate would only be reported in quantities as required by California Health & Safety Code Chapter 6.95. This notification requirement appears to be an attempt by DTSC to go beyond the intent of the law. Unified Program Agencies will field potential questions from affected businesses as to why they need to report similar information to DTSC as they do to a Unified Program Agency. We suggest this section of the regulations is not needed as it is



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duplicative.

Regarding §67384.8 Special best management practices for flares and pyrotechnic perchlorate materials

1. Who is expected to enforce subsection (c) of this section? Subsection (c) states "Within twenty-four (24) hours of a public display of fireworks, the pyrotechnics operator, in addition to complying with title 19 of the California Code of Regulations, section 1003, shall, to the extent practical, collect any explosive residuals found during the inspection of the entire firing range". Unified Program Agencies traditionally have not had oversight of firework displays nor do we have enough resources to enforce these events. Policing events such as these may result in significant overtime costs to Unified Program Agencies. Certainly if there is a complaint we would investigate the nature of the complaint but it should not be expected that we would inspect all public firework displays or events.

Thank you for allowing us the opportunity to comment. Please call me at (619) 338-2395 if you have any questions regarding our comments.

Sincerely,

ORIGINAL SIGNED

~~Michael~~ Dorsey,
Hazardous Waste Issue Coordinator
California CUPA Forum

Cc: Don Johnson, Cal/EPA
Peggy Harris, DTSC
Kim Wilhelm, DTSC
Terry Carrier, Orange County Health
California CUPA Forum Board



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December 19, 2005

Mr. Ed Neito
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

RE: RESPONSE TO DECEMBER 12, 2005 CORRESPONDENCE REGARDING *PERCHLORATE BEST MANAGEMENT PRACTICES FOR PERCHLORATE MATERIALS* – DRAFT LANGUAGE

The California CUPA Forum Board appreciates the Department of Toxic Substances Control (DTSC) response to our original comments of November 21, 2005. Although DTSC has provided additional clarification or addressed many of our comments, we still have some concerns regarding the draft regulations for Perchlorate Best Management Practices for Perchlorate Materials. Please understand that our comments are not directed at the rationale for regulating perchlorate materials but rather to ensure Unified Program resources are directed to oversee the most important and significant environmental and public health impacts that may result from the improper management of perchlorate materials. Most importantly we want to ensure that the regulations can be implemented in a consistent and equitable manner by all Unified Program Agencies.

General Comments:

The CUPA Forum Board looks forward to meeting with representatives from DTSC to develop a strategy for the oversight of handlers of perchlorate materials and generators of perchlorate waste that includes a practical regulatory oversight approach that will ensure resources are directed to oversee the most important and significant environmental and public health impacts of perchlorate materials.

Specific Comments:

Regarding §67384.4 Labeling requirements for Perchlorate Materials

Subsection (a) requires that "persons who manufacture perchlorate materials for sale, receive perchlorate materials for resale or use in California, or generate a perchlorate containing waste shall ensure that the perchlorate materials are properly labeled...All perchlorate material, except those materials listed in subsection (b) of the section shall be labeled and marked clearly with the following, "'Perchlorate Material – Environmental Hazard- Special handling and disposal restrictions may apply, See www.dtsc.ca.gov/perchlorate".

1. The CUPA Forum still has some concerns on how to consistently enforce this section if a manufacturer is located outside of California. If a manufacturer does not comply with this requirement it will put the onus on the end user to make sure their materials are properly labeled. This will also require each Unified Program Agency to look at every



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potential material handled by a business to determine if their materials have perchlorate as part of the active ingredients.

2. The requirements of Section (b)(3) are still vague and it is unclear how these can be enforced.

Regarding §67384.5 Packaging best management practices requirement for perchlorate materials

The CUPA Forum still finds this section to be problematic to enforce. Why not change it this say as long as the packaging meets DOT standards?

Regarding §67384.6 Containment best management practice requirements for the storage, processing and manufacturing of perchlorate materials

Changes were made per our last comments. No additional comments at this time.

Regarding §67384.7 Notification best management practice requirements for perchlorate materials

As long as DTSC will be responsible for collecting and maintaining this data the CUPA Forum Board has no additional concerns or comments.

Regarding §67384.8 Special best management practices for flares and pyrotechnic perchlorate materials

This section has been revised since our last comments and we would request to include this section in our discussion with DTSC regarding regulatory oversight.

Thank you for allowing us the opportunity to comment. Please call me at (619) 338-2395 if you have any questions regarding our comments and to set up a meeting with you and/or additional DTSC representatives to discuss regulatory oversight of these proposed regulations.

Sincerely,

ORIGINAL SIGNED

Michael Dorsey,
Hazardous Waste Issue Coordinator
California CUPA Forum

cc: Don Johnson, Cal/EPA
Peggy Harris, DTSC
Kim Wilhelm, DTSC
Terry Carrier, Orange County Health
California CUPA Forum Board

SACRAMENTO COUNTY**SHERIFF'S DEPARTMENT**DIRECTOR'S OFFICE
DEPT OF TOXIC SUBSTANCES CONTROL

OCT 12 2005

RECEIVED

October 4, 2005

Lou Blanas
Sheriff

Mr. Leonard E. Robinson
Acting Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento California 95812-0806

Dear Mr. Robinson:

I am writing to advise you that I am opposed to the emergency rule making your department has prepared re. Best Management Practices for products containing perchlorate as required by AB 806 (Status Chapter 608, 2003). These proposed emergency regulations on the use of road flares will have a negative impact on the safety of all Sheriff's Deputies and Police Officers as well as the general public.

So as not to be repetitive my concerns are the same as those expressed in the letter a by Commissioner of the California Highway Patrol Mike Brown, dated September 22, 2005, on these proposed regulations.

Flares are the nationally cognized symbol of an emergency situation which warns the public there is an emergency that has required a law enforce response.

All law enforcement and other public safety agencies that use road flares to protect personnel and the public that a hazardous situation or condition exists will be opposed to these regulations.

Thank you for considering my opposition to these emergency regulations as they relate to road flares.

Sincerely

ORIGINAL SIGNED

✓ **LOU BLANAS**
SHERIFF

CLEAN WATER ACTION

111 New Montgomery Street, Suite 600, San Francisco, CA 94105

(415) 369-9160

December 30, 2005

Mr. Ed Nieto

Department of Toxic Substances Control

1001 I Street

Sacramento, CA 95814

Dear Mr. Nieto,

On behalf of Clean Water Action and our 20,000 California members, I am writing to express our belief that the proposed Best Management Practices (BMPs) developed by the Department of Toxic Substances Control (DTSC) for the use of perchlorate and perchlorate-containing products do not go far enough to stop further pollution into our environment. Currently, perchlorate contaminates the drinking water sources of over 15 million Californians, putting public health at risk. Impacted communities, environmentalists, and public health advocates have consistently called for stringent health standards, clean up strategies, and pollution prevention measures for perchlorate. These BMPs do not, in our view, respond to the public's desire to protect their health and local environments from further risk.

At the heart of our criticism is DTSC's articulated decision not to consider banning specific uses of perchlorate or perchlorate-containing products and requiring the employment of alternative products or technologies. Instead, the proposed BMPs do just the opposite, by allowing a number of exemptions to restrictions regarding labeling, use, disposal, and reporting about these products. In addition, it appears that the proposed thresholds for use and reporting are very liberal (500 lbs, or in the case of section 67384.11 b, 8,000 lbs gross weight or 4,000 lbs net explosive weight). Finally, we are confused by DTSC's assertion that perchlorate, in certain circumstances, is non-hazardous. Perchlorate, though sometimes found in nature, can impact the body's ability to produce thyroid hormone, which can lead to severe impairment of fetus and infant brain development. Though not yet legally regulated, it has been recognized as a health risk in both food and drinking water, and drinking water standards are being developed in California. Consequently, perchlorate and products containing perchlorate, should be seen and handled as a potential environmental and public health hazard in all cases.

In addition to these general criticisms, we have specific concerns as well. They are as follows.

1. There is no description of what appropriate labeling entails. This should be spelled out clearly, in order to ensure complete information is available to anyone handling perchlorate-containing products and for regulatory purposes.

2. Because labeling is used to inform users, storage managers, etc. that perchlorate is present, we oppose the following exemptions to the BMPs:

- products with information about perchlorate inside the container (labeling is most effective outside the container),

- "finished products produced pursuant to federal, military, or space launch contract requirements", and
- perchlorate materials registered as pesticides

3. Use of perchlorate containing fertilizers can contaminate surface and ground water, as well as food products and milk. We strongly oppose exempting fertilizer applicators from regular evaluations of alternative products as outlined in Section 67384.11. Instead, we would support an application ban, or, at the very least, restrictions on the use of these products.

4. Notification, under section 67384.7, should not be a one time only event. Instead, it should be a regular requirement and be applicable to new businesses as they evolve. Furthermore, we would like to see a clear description of what constitutes a business. For instance, does this section include the military, aerospace, and farms?

5. Section 67384.7c egregiously restricts notification about specific materials, such as military munitions managed in accordance with Department of Defense (DOD) regulations, regulated wastewater, fertilizer (reported pursuant to Food and Agriculture code), and fireworks. BMPs are not effective if all regulatory agencies are not following the same standards, including DOD and the state's water boards. In addition, without notification by all users of perchlorate and perchlorate-containing products, there is no accurate, complete inventory of what is in place at a given location or regionally that could have environmental consequences. The result is a disjointed regulatory and reporting system that will be of little or no use in protecting our water sources and a lack accountability by disparate regulatory agencies.

6. It is not clear, under Section 67384.8c what pyrotechnics operators who collect material found during inspection of a firing range are to do with materials they collect. The proposed BMPs would be improved by having this spelled out.

7. Section 67384.9 is deficient in that it:

- does not indicate how spilled material is determined to be hazardous waste (we view it as hazardous by definition),
- does not provide for any enforcement actions when spills occur, especially in cases where it is not possible to clean up the perchlorate completely, and
- does not address eventual releases to groundwater.

8. Section 67384.10 a(2) anticipates the possibility of a release of perchlorate from landfills that are composite lined, yet such disposal is allowed. Including perchlorate as a Constituent of Concern is action after the fact, and not preventative of a serious problem.

9. When is liquid perchlorate containing wastewater non-hazardous, as indicated in section 67384.10 b? The requirements of this and the following section belie that presumption.

10. We support the evaluation of alternatives and pollution prevention techniques more often than every 5 years under Section 67384.11, and suggest a biannual schedule instead. As perchlorate is discovered in more and more water sources throughout the United States, the technology for treatment and the development for alternatives will continue to grow as well. In the meantime, we cannot subject our communities to further risk by not taking advantage of all possible alternative products and technologies as they arise.

We appreciate this opportunity to offer these comments to you as you finalize your BMPs for perchlorate. We further wish to support you in your mission to protect "California and Californians from exposures to hazardous wastes" in the face of pressure from perchlorate product manufacturers, users, and dischargers. Please feel free to contact me if I can answer any questions regarding this issue and the views of our members.

Sincerely,

ORIGINAL SIGNED

Andria Ventura
Program Manager